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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK - CIVIL TERM - PART: 54

-----X

PALESTINE MONETARY AUTHORITY,

Plaintiff-Counterclaim Defendant,

-against-

DAVID STRACHMAN, as administratrix of the
ESTATE OF YARON UNGAR, et al.,

Defendants-Counterclaim Plaintiffs,

-----X

DAVID STRACHMAN, as administrator of the
ESTATE OF YARON UNGAR, et al.,

Plaintiff-Judgment Creditors,

-against-

THE PALESTINIAN AUTHORITY, et al.,

-----X

Index No. 107777/05
Motion

111 Centre Street
New York, New York
April 19, 2007

B E F O R E:

HONORABLE SHIRLEY W. KORNREICH,
Justice.

A P P E A R A N C E S:

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Also Present:

DAVID STRACHMAN

BARBARA STROH, CSR, RMR, CRR
Official Court Reporter

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THE COURT: Yesterday an order to show cause was brought to this courtroom in regard to another case involving the Palestinian Monetary Authority.

Obviously, I ordered that the order to show cause be served, and the case was put on for this morning and adjourned for the afternoon.

Who wants to argue first?

MR. EMERY: Your Honor, there's one in our papers. For the record, Scott Emery, E-M-E-R-Y.

We did not yet have a copy of the Knox restraining order because we had been unable to obtain it. We since have, and I'd like to have it handed up.

It's notable, very surprising, actually, that only the Palestine Authority and the PLO are named in this restraining notice.

There is no mention of the PMA in this notice whatsoever, so it's unclear why Mr. Tolchin is taking the position that this somehow limits the release or negates the release that your Honor had ordered with respect to the funds being held by BNY.

THE COURT: Mr. Tolchin, I'm not sure what is happening here and, just to give this transcript some context, I previously had a case involving a different judgment, and it involved Yaron Ungar, who had been killed, and a judgment obtained against the Palestinian

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Authority, and there are other entities on his behalf by his estate and those who were to inherit it from him.

In that case there was a -- there was both a state restraining notice, as well as a federal order restraining funds, and in the notice, pursuant to the order, as well as the restraining notice, the Palestinian Monetary Authority was named.

I issued a lengthy decision after about a year and a half, two years of litigation, in which the restraining notices were vacated, and the money that was restrained was in the Bank of New York in a suspense account. The amount was approximately \$30 million.

This order to show cause deals with another judgment which I had never seen prior. It was not a case in front of me.

It is a judgment that was obtained on behalf of Leslie Knox. I'm not sure if Les Knox is the deceased or if that's the estate, I'm not sure, or the executor. I'm not sure what that is, but it's a different case. It's the Knox case against the PLO and, I assume, the Palestinian Authority.

Apparently, as a result of the restraining notice in that case, BONY has now refused to release

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the suspended funds at issue in the previous case.

MR. TOLCHIN: I'm not sure that the Bank of New York has said anything, your Honor, to be fair.

THE COURT: This is the position of the PMA, the Palestinian Monetary Authority.

MR. TOLCHIN: Your Honor, the Knox case is a Federal Court case pending in the Southern District. Judgment was entered there. There was no restraining notice from there. It's important to be precise.

THE COURT: There is no Federal order.

MR. TOLCHIN: There is an execution which was issued by the clerk of the Federal Court and levied on the Bank of New York by the United States marshall.

Your Honor has -- and that was done in February. It's not something that happened since your Honor's order. They make all sorts of accusations that Mr. Strachman and I should be sanctioned for trying to circumvent your Honor's recent order.

It's got nothing with anything. The Knoxes are separate, they have nothing to do with the Ungars, it's an absolutely completely different case, completely different people, completely different incidents.

THE COURT: I understand that. Why is the execution against funds in the name of the Palestinian

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Monetary Authority?

MR. TOLCHIN: The Knoxes do not agree with your Honor's ruling, to be blunt. The Knoxes are entitled to their own day in court. The Knoxes are not bound by your Honor's ruling. The fact that they happen to share counsel is meaningless. It's coincidental.

THE COURT: I'm not saying there is any collateral estoppel or anything else.

MR. TOLCHIN: Well, they are the PMA's. That's exactly what the PMA is saying.

THE COURT: Are they saying there's privity between the Strachman --

MR. TOLCHIN: No, they're here in this order to show cause preposterously, in my opinion, asking your Honor to order me, as counsel for the Knoxes, to withdraw our execution in the Knox case, a case over which your Honor has absolutely no jurisdiction.

If they have a problem with the execution levied by the United States marshall on the Bank of New York, there's a courthouse across the street at 500 Pearl Street, where Judge Marrero has his courtroom, and that's where they can make their application.

THE COURT: Does the execution restrain the PMA funds?

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MR. TOLCHIN: We contend that it does.

THE COURT: Why?

MR. TOLCHIN: Because the PMA is a part of the Palestine Authority. Notwithstanding that your Honor found that OFA, the Office of Foreign Assets found something, the Knoxes do not agree, and we don't believe that Judge Marrero will agree. Maybe he will, maybe he won't, but that the Knoxes are entitled to their day in court.

Do you want to say something?

Mr. Strachman drove down here from Rhode Island to be here today.

THE COURT: I believe it's "up here," but go ahead.

MR. TOLCHIN: No, it's down there. Rhode Island is north of here.

THE COURT: Rhode Island, okay. Please be seated.

MR. STRACHMAN: Thank you, your Honor.

THE COURT: Mr. Strachman, first of all, are you involved in this case as well, in the Knox case?

MR. STRACHMAN: Yes, I was counsel of record. I litigated the case in behalf of the Knoxes, your Honor.

THE COURT: Okay.

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MR. STRACHMAN: In Fact, Mr. Tolchin had very little, nothing to do with the case until we became post judgment.

I'd like to point out a couple of things.

1, this court issued this order to show cause. We didn't receive it in Bob's offices until after 5 o'clock yesterday. I cancelled everything that I had on my schedule to drive down here to be here today.

This proceeding is an attempt to usurp jurisdiction in a Federal case, and it has nothing to do with your Honor. Your Honor ruled. We disagreed, but we respect your ruling. Your Honor's ruling is law of this case for this period of time; we understand that.

This case that you litigated, that you tried and that you resolved had -- it's over. There is nothing restraining the funds in this case and in this court. That's fine, and we have so indicated in a series of E-mails and letters going back weeks now with opposing counsel, Haig Kalbian out in Washington, who your Honor knows has been here and who litigated the case.

THE COURT: This is the other case.

MR. STRACHMAN: No, this case right here, the Ungar case.

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THE COURT: The Knox case?

MR. STRACHMAN: The Ungar case right here.

THE COURT: I understand. Please be specific. We're talking about two different cases. When you say "this case," I don't know what you mean.

MR. STRACHMAN: There is only one case in this courthouse, and that's Ungar.

THE COURT: Please, we have an order to show cause right now, so when you refer to two different cases, use a name or somehow refer to them.

MR. STRACHMAN: The only case that's pending in this courthouse is the case involving the Ungar judgment. The Knox judgment has nothing to do and never has anything to do and never had anything to do, any involvement with the New York Supreme Court, nothing at all.

While this case was being litigated, a series of other judgments came down against the Palestine Authority and the PLO. There's one in Florida, there is another one in D.C., another one in D.C. state court, there may be several others. They've killed a lot of people and stiffed a lot of people.

THE COURT: No, please, let's not move off the issue, Mr. Strachman in front of me. I do not have the PLO in front of me, I do not have the PA in front of

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me, I do not have Hamas in front of me, which may also be the PA. The only entity I have in front of me in the Strachman/Ungar case is the PMA, the Palestine Monetary Authority.

The other -- in fact, the rulings I made in regard -- I should take that back -- with regard to the PA or PLO were not in favor of the PA or the PLO. I've ordered that any monies held by the Bank of New York in their names be turned over, if I recall. The only entity my decision dealt with was the PMA.

MR. TOLCHIN: I think Mr. Strachman is getting up to explain why the Knoxes filed what they filed to give you background.

THE COURT: Move to that.

MR. STRACHMAN: The PLO have other judgment creditors.

THE COURT: I understand we're not dealing with the PA or PLO.

MR. STRACHMAN: As a function of collecting on their judgment, the Knoxes, in a case that was dealt with with Judge Marrero in Federal court in Southern District, before your Honor issued this ruling in April, having nothing to do with your Honor's ruling in April, sought and obtained an execution and served that execution two months ago. The marshall served that two

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months ago.

What they're attempting to do today is to hoodwink your Honor and to get your Honor to lift that execution and to quash that execution.

They're in the wrong place. They've got to go over there.

THE COURT: Mr. Strachman, could I ask you something. Does the execution -- is it against the PMA?

MR. TOLCHIN: Your Honor, the way the Federal execution --

THE COURT: Please. You can't do this. Mr. Strachman is standing and talking. Mr. Tolchin, sit down.

MR. STRACHMAN: The execution, which apparently was just given to your Honor, runs specifically to the plaintiffs -- excuse me -- to the defendants, the Palestinian Liberation or -- and the Palestine Authority and their a/k/a's, Palestinian National Authority, the Palestinian Council, etc.

THE COURT: It does not name the PMA, am I correct?

MR. STRACHMAN: Of course not, of course not. So, this court has jurisdiction only over the Ungar judgment and, in fact, in respect to the Ungar

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judgment, having the benefit of your Honor's ruling, none of us have ever said qua Ungar judgment creditors, these funds were restrained.

They're not restrained by this court. They're restrained by another court, just like any other creditor of the PLO or the PA can come into new court in the country and seek enforcement of their judgment.

They may take your judgment, and they may give it to another judge and say take a look at this. That may be of some benefit, that may be helpful in deciding that issue; maybe not.

It has nothing to do with it. They're free to take all the judgment creditors and bring them before your Honor. They can't do that. That's impermissible.

THE COURT: I don't believe that's what they're trying to do. Let me hear from them.

MR. STRACHMAN: Let me finish, Judge.

This is what they've said. They've said they want an order from your Honor directing me and Mr. Tolchin, as counsel for the Knoxes in another case, to withdraw the restraining notice, serve on the Bank of New York in Knox versus Palestine Authority, the case number, pending in New York, pending in the Federal court.

This court has no authority over that. If

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they want to seek relief, go to Judge Marrero. We believe they have the right to try to seek relief, and so do we, in another court.

THE COURT: I'm not certain because I don't have any opposition papers from you, and I haven't heard the other side, but I do believe that if there is a res in New York State, I might have some jurisdiction, but that's another issue.

MR. STRACHMAN: They're also seeking a restraining order against counsel, against the Knoxes' two attorneys, saying -- requesting an order from the court prohibiting us from attempting to circumvent.

We're not circumventing your order. Your order is in this case. But there is another case. This happens all the time in commercial litigation. They are multiple judgment creditors. They're seeking all kinds of assets.

They have overlapping layers of restraint on the assets, and one may win and one may lose, and the next one goes in and tries to grab the assets. That's what's happens here.

This is -- it just happened in Jerusalem and just happened this week. Just as counsel was threatened, not by these attorneys, but counsel was threatened by the PLO's attorney, it's quote, "easier

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to kill you than to pay the judgment."

What they're trying to do is --

THE COURT: I don't know what you're talking about.

MR. STRACHMAN: That's what the proceedings in Jerusalem, where these are going on, has threatened the attorneys. This is directed against counsel, not the Knoxes, not the Ungars. They're trying to restrain and interfere with the Knoxes' ability to collect their judgment. They're trying to interfere with our rights vis-a-vis our clients. That's tortious interference with our rights.

THE COURT: All they have done -- Mr. Strachman, all they have done is bring an order to show cause.

There is no TRO here, there is nothing here other than they're coming to court, and their papers were served upon you.

MR. STRACHMAN: That's what they're seeking, your Honor.

THE COURT: That may be what they're seeking, but nothing has occurred thus far, so let's get this straight.

MR. STRACHMAN: I understand that, but your Honor issued an order ex parte. We served this morning

1 Proceedings

2 at 9:30 a letter, five-page letter laying out our
3 position.

4 THE COURT: Which is it? I don't have it.

5 MR. TOLCHIN: I faxed it to your Honor.

6 MR. STRACHMAN: Your clerk informed us you had
7 received it.

8 MR. TOLCHIN: Your clerk informed us you
9 refused to read it.

10 MR. STRACHMAN: Your clerk informed us that
11 you refused to read it.

12 THE COURT: I don't usually read faxes from
13 one side. You know --

14 MR. STRACHMAN: Apparently you read this the
15 other day.

16 THE COURT: That's an order to show cause, and
17 I also struck out any TRO or anything else, if you
18 notice, and put it on for the next day, so that you
19 could come to court on notice.

20 Nothing was done yesterday other than the fact
21 that I ordered you to come to court so that we could
22 have some argument and I could be enlightened. That's
23 all that occurred.

24 A letter sent by fax to me is something
25 totally different, particularly since you were
26 appearing this afternoon. Let's continue.

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MR. TOLCHIN: Your Honor, can I be heard for a minute.

THE COURT: You're not going to both be heard at this point.

MR. TOLCHIN: I'm not going to repeat anything that's been said.

THE COURT: Mr. Tolchin, if you want to be heard, Mr. Strachman has to sit down.

Are you finished, Mr. Strachman?

MR. STRACHMAN: Yes.

MR. TOLCHIN: Your Honor, I understand your Honor hasn't ordered anything yet. What we're trying to talk about is what they're asking for.

What they're asking for is something that your Honor simply cannot grant. You can't grant it. You have no authority, Judge, to vacate a Federal execution.

If you direct me to, I will resign as counsel for the Knoxes because you would be putting me in a position where I would have a conflict of interest, where I would have to be giving up the Knoxes' rights in order to comply with Ungar, and I can't do that.

THE COURT: Mr. Tolchin, as I said earlier, this is not a collateral estoppel case unless there is some privity between the Ungars and the Knoxes, and I

1 Proceedings

2 haven't heard anything like that yet.

3 MR. TOLCHIN: I agree with you 100 percent.
4 Your Honor's order applies to Ungar. It may have some
5 influence on the judge hearing Knox but does not bind
6 Knox. It doesn't bind the judge hearing Knox, and that
7 being agreed by us means that what they're asking for
8 here is an impossibility.

9 They are asking your Honor to order me to
10 withdraw something in another case. First of all, you
11 can't order me to withdraw anything.

12 THE COURT: I'm not saying I could.

13 MR. TOLCHIN: That item of what they're asking
14 for is impossible.

15 You cannot order the thing vacated. You're
16 not a Federal judge. It's a different court. You
17 cannot direct a marshall to vacate his levy or the
18 clerk to vacate the execution. Judge Marrero can, but
19 you can't.

20 So, what they're asking for here is something
21 you simply can't grant.

22 THE COURT: Let me hear from the other side.

23 MR. EMERY: Your Honor, we're asking for
24 something far more simple. We wrote these papers
25 without having a copy of the Knox restraining notice.

26 MR. TOLCHIN: It's an execution, sir, not a

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restraining notice.

MR. EMERY: If I may just address my comments to your Honor, we did not have the Southern District -- the Knox paper that I have handed up to your Honor this afternoon.

We attempted to get a copy of it from Mr. Tolchin, who actually suggested that we prepare some sort of stipulation regarding something that's not before your Honor at the moment, but we never were able to receive a copy. We finally got a copy from Bank of New York yesterday.

It really chrystallizes what the issue is here today before your Honor in the Ungar case.

You had a situation where you have a judgment against the PA, the PLO, Hamas and a bunch of other entities with Palestine or Palestinian in their names, one of which was my client, the Palestine Monetary Authority.

And we argued from the very beginning of this case that money was wrongfully frozen, the Bank of New York, as your Honor pointed out, two years of litigation, finally that money was ordered to be released by the Bank of New York.

Now, in an attempt to stop that release from happening, there is a Knox writ of execution -- I will

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be precise this time -- and that writ of execution, unlike the Ungar execution and restraining notice, contains no reference whatsoever to the Palestine Monetary Authority.

If Mr. Tolchin truly wanted to be able to stop the Bank of New York from releasing these funds at this time, it would have behooved him to make sure that the Palestine Monetary Authority was listed on this writ of execution, as he surely would have been able to do.

THE COURT: Let me ask you something. I don't understand why you're here if the Palestine Monetary Authority is not named in this execution.

MR. EMERY: Because the money is not being released by Bank of New York, your Honor.

THE COURT: I don't understand why, if there is nothing restraining the Bank of New York from releasing the money. If there is -- if the execution does not name the Palestinian Monetary Authority, let me ask the Bank of New York, why is that money not being released.

MR. BIALO: Kenneth Bialo.

I'll tell you how we got here, so that we can clarify at the end of my little spiel what our position is. We didn't know there was a summary judgment motion being made.

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We didn't know there was a summary judgment motion argued. We didn't know that there were any motions pending before the Court until the April 2 decision. We were not served in any of the papers.

THE COURT: But were not served with any of the motions?

MR. BIALO: No, we were not served with any of the papers, so a lot of water has gone under the bridge since I last saw your Honor. The first we heard of this was we got a copy of the summary judgment decision that your Honor made, I believe it was a day or two after April 2.

Then we received an E-mail from Mr. Tolchin, and then we received a call from Mr. Emery, and everything revolved around April 16.

Mr. Tolchin was apparently -- there is a whole bunch of E-mail traffic attached to the order to show cause, which we didn't get either, but the bits that we got out of it were that there was something going to happen on the 16th of April, Mr. Tolchin was going to give advice on what his position was, and then that turned out that didn't work, so there was another E-mail from Mr. Tolchin.

THE COURT: Give advice to whom?

MR. BIALO: He was going to tell Mr. Emery and

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me what his position was, I guess. I'm not sure exactly what it was that he was supposed to tell us, but I was willing to listen because, as your Honor knows, from the very beginning of the case, we're holding the money. We will do what your Honor says to do, and that's where we are.

So then the 16th didn't work, so then it was pushed over to the 17th, and there's apparently an exchange of E-mails going back and forth between the lawyers for the other parties.

Then we find out on the 17th that the Strachman parties take no exception to the idea that the PMA can now resume banking through the United States institutions.

That was good. But with respect to the money being held by BNY, the Strachman parties didn't want to take the position, and they said they'd have their position the next day.

I understand that Mr. Emery's firm sent a note over, saying that's not good enough. It's got to be noon the next day, and there was a lot of fussing and scratching.

The next thing we knew was Mr. Tolchin says in an E-mail, here's our position. We're going to take the position that, under the Knox writ of execution,

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the Bank of New York cannot release the money. Okay.

THE COURT: So why is the Bank of New York or the Strachmans or the PMA or somebody not in Federal court, where the execution came from, and the execution does not name the PMA, so I don't understand why the PMA did not go to Federal court.

MR. BIALO: Your Honor, precisely --

THE COURT: Or BNY, Bank of New York.

MR. BIALO: Our view of this, just so everybody is clear once again, is we'll do what we are told to do. If your Honor issues today a direct order to me to turn over the funds because the funds do not belong to the PLO or to the PA, which are the parties named in the writ of execution, then I will do what you your Honor says.

If Mr. Tolchin decides after that is done, if that were to be done, that he wants to run over to Judge Marrero and say, wait a second. I want you to do something about this because the Bank of New York is about to release some money because Justice Kornreich has said to do so, that's up to him.

On the other hand, if Mr. Emery would like to take the position that he needs to go over there and get some clarification of the order, that's fine with me too. Right now I'm sitting with the money, and I'm

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2 prepared to do what the judges of the world tell me to
3 do.

4 THE COURT: Well, let me tell you this:
5 Pursuant to my decision in regard to the Ungars and the
6 PMA, which is the case in front of me, the money is to
7 be released.

8 Now, you're in front of me, and you're asking
9 me to interpret -- because this is what it is,
10 interpreting -- a Federal order from across the street,
11 yet. I can't interpret that order.

12 MR. BIALO: No, your Honor. I'm not asking
13 for that.

14 THE COURT: Well, somebody is asking me to
15 interpret it.

16 MR. BIALO: If your Honor would say to me,
17 bank, no, you're directed to release the funds because
18 they don't belong to the PLO or the PA --

19 THE COURT: Tell you that in the Ungar case.

20 MR. BIALO: Yes.

21 THE COURT: And as far as the Federal order
22 goes, I have no idea what that Federal order means. I
23 have nothing at all to do with that Federal order.

24 MR. BIALO: If Mr. Emery will submit an order
25 to you for your signature saying Bank of New York,
26 release this money because it doesn't belong to the PA

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or the PLO, I will follow the order upon notice of entry being given. I will do what I have to do. If Mr. Tolchin --

THE COURT: What you're asking me to do -- are you asking me to rule on the Federal order?

MR. BIALO: No, your Honor, not at all, no.

THE COURT: Are you telling me that the only thing holding this money is the State restraining order, which no longer names the PMA?

MR. BIALO: Yes, your Honor.

THE COURT: And the Rhode Island order? Is that all that's holding the PMA money?

MR. BIALO: What is holding the PMA money, from my perspective -- and, of course, I haven't consulted with my clients about this because the papers came to my office yesterday at 5 o'clock, and my client had gone to Delaware, so I haven't yet spoken to him to get the drift of exactly what position he wants me to take on this, but my view, my view is I'm holding the money right now because there seems to be a dispute.

THE COURT: I can only tell you the Ungar restraining notices are gone.

MR. BIALO: Right.

THE COURT: But the Federal order, as well as the State order, which was in front of me. Now, I

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2 don't know if there are other orders. On its face the
3 order from the Southern District in the Knox case does
4 not mention the PMA.

5 If you need clarification, go to the judge who
6 issued that order. It's not in front of me.

7 MR. BIALO: What I'm hypothesizing, your
8 Honor, is simply a direction from you to the bank to
9 release the money that is held in the name of the PMA
10 because that money does not belong to the PLO or the
11 PA. If you issue --

12 MR. STRACHMAN: Your Honor gave a ruling.
13 Your Honor ruled--

14 THE COURT: Both of you -- Mr. Strachman, are
15 you admitted in New York?

16 MR. STRACHMAN: No, I'm not.

17 THE COURT: You may not speak. I'm not
18 admitting you pro hoc vice.

19 Mr. Tolchin is here. He's a New York
20 attorney. You have not made application to be.

21 MR. STRACHMAN: You're not allowing me to
22 speak after I've been sued.

23 THE COURT: You can speak on your own behalf
24 but not on behalf of any clients.

25 MR. STRACHMAN: I'm speaking on my own behalf.
26 Your Honor ruled, your Honor ruled who this money

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belongs to. That's the end of this case. He is now asking you -- and he gave lie exactly to the issue.

THE COURT: As I said, if you're arguing on behalf of a client other than yourself, you may not speak.

MR. STRACHMAN: I'm arguing on behalf of myself. He just gave lie to this whole proceeding and the preposterous circus that's here. He's asking you tell me what to do vis-a-vis across the street.

THE COURT: That's got nothing at all to do with you.

MR. STRACHMAN: It does, it absolutely does because he's saying the cause -- that's what they're saying, I David Strachman, is the cause of this problem.

You gave a ruling. We all understand what it says. It was crystal clear. There is no dispute as to what your Honor ruled, none whatsoever. It was very clear.

We're out of this court. There is another proceeding in another court. That's where this has to go, and if he doesn't understand what the implications of an execution is, then he needs to go there.

THE COURT: With regard to the Knoxes, you are out of turn. I will hold you in contempt or sanction

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2 you. You are not an attorney admitted in this State.
3 Please sit down, Mr. Strachman.

4 MR. TOLCHIN: Judge, the problem with what Mr.
5 Bialo is saying is as follows: As I hear Mr. Bialo,
6 he's saying, your Honor, if you direct the Bank of New
7 York black-and-white to release the money by X time, X
8 date, then they'll do it.

9 But what that's not taking into consideration
10 is the Knoxes still have their position that the money
11 is restrained by the marshall's levy served on the Bank
12 of New York.

13 THE COURT: The marshall's levy doesn't name
14 the PMA.

15 MR. TOLCHIN: It doesn't have to.

16 THE COURT: Why not.

17 MR. TOLCHIN: In the Knoxes are right that the
18 PMA is part and parcel of the PA. It doesn't need to
19 name it. If the Knoxes prevail and the Bank of New
20 York has released the money, the Bank of New York does
21 so at their peril absent an order from the Federal
22 judge who has jurisdiction over that levy and Federal
23 execution.

24 THE COURT: Can you tell me, Mr. Tolchin,
25 under what wording this execution -- I mean in the
26 Federal order in front of me there was a notice naming

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the PMA. Here nothing names the PMA.

MR. TOLCHIN: It didn't have to, Judge. If the PMA is part -- if, as we contend -- and when I say "we" --

THE COURT: Where have you contended that?

MR. TOLCHIN: The Ungars have contended, and the Knoxes.

THE COURT: You're mixing the two cases.

MR. TOLCHIN: And the Knoxes.

THE COURT: Where have the Knoxes contended this? In front of the Federal Judge?

MR. TOLCHIN: There's been no proceedings there because there was a --

THE COURT: They have never contended that.

MR. TOLCHIN: That's not true.

THE COURT: And no notice and order from the Federal court naming the PMA.

MR. TOLCHIN: Correct. It doesn't name the PMA because it doesn't have to.

THE COURT: Why not? What if I allege -- what if I have an order against Joe Shmoe, and I allege that Joe Jones is an alter ego? I don't have to name Joe Jones?

MR. TOLCHIN: Not alter ego. Not alter ego. If Shirley Kornreich calls herself sometimes Stevie

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2 Kornreich, I don't have to prove that something
3 entitled in one belongs to the other. They're one and
4 the same. It's the same thing.

5 THE COURT: You have to do something. You
6 would have to name Stevie Kornreich or go to a court to
7 make a decision.

8 MR. TOLCHIN: That's what we did. We served a
9 levy, and we informed the Bank of New York and all
10 parties that it is our position that the levy covers
11 the PMA, and if they think otherwise, they can make an
12 application, and if they release the money because they
13 disagree with us and we ultimately win, the Bank of New
14 York is going to have to pay twice.

15 THE COURT: Let me ask you this, Mr. Tolchin.
16 Where did you inform them? Can you show me a document
17 in which you informed them that the PMA in the Knox
18 case is part of this Federal order?

19 MR. TOLCHIN: Yes, it's part of the order to
20 show cause, and I'll have to look for it for a minute,
21 but I'll tell you what form it takes. It was an E-mail
22 from me.

23 THE COURT: Oh, an E-mail.

24 MR. TOLCHIN: Yes, yes. When the Bank of New
25 York -- I'm sorry. When the PMA's counsel demanded
26 that the money be released by the Bank of New York, we

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2 sent everybody a communication saying that we contend
3 that it is covered.

4 Under the procedural rules, we have 90 days to
5 serve a turnover proceeding in the Federal court. In
6 fact, we're planning to file it next week.

7 Here I believe it's exhibit E -- no, that's
8 their response.

9 THE COURT: The very last exhibit, there is
10 from the last exhibit, very last exhibit -- and let me
11 quote. This is from Robert Tolchin to Mr. Kalbian,
12 K-A-L-B-I-A-N, dated April 18, 6:57 a.m. which is
13 yesterday: "Haig" -- that's Mr. Kalbian's first name
14 -- "I write as a courtesy to inform you that the Knox
15 plaintiffs will be seeking turnover of the PA/PMA funds
16 held by BONY.

17 "Their turnover action should be filed the
18 next few days. At the same time, I reiterate what I
19 told you in my E-mail yesterday, that the Knoxes have
20 no objection to the PMA resuming its clearance
21 activities in New York forthwith, and the Knoxes are
22 prepared at any time to enter a stipulation to that
23 effect. Bob," which is Mr. Tolchin.

24 That's the only thing I see here. Is there
25 notice to BONY anywhere?

26 MR. TOLCHIN: There was an earlier E-mail,

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Judge, in which we reminded everybody about the Federal execution. The problem is I don't have a tabbed copy. All this was faxed to me.

MR. BIALO: It's exhibit B.

MR. TOLCHIN: B, like boy?

MR. BIALO: Yes.

MR. TOLCHIN: Yes, it's an April 8 E-mail.

THE COURT: Well, this is an E-mail to everyone, including Mr. Bialo, who is from Bank of New York.

MR. TOLCHIN: Yes.

THE COURT: And the paragraph which is the second paragraph states, and it's an E-mail from Mr. Tolchin: "I note, however, that the PMA funds at BONY remain restrained by an execution/restraining notice served on BONY recently in the matter of Knox V. Palestinian Authority. It has an index number, and it says Southern District of New York.

Is that what you're referring to.

MR. TOLCHIN: That's what I'm referring to.

THE COURT: But there is nothing issued at all from the Federal court or in a Federal court order and nothing before the Federal court naming the Palestinian Monetary Authority?

MR. TOLCHIN: That's correct, because the

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2 procedure is you can serve an execution, and then you
3 have a period of time to file a turnover proceeding
4 and, on the conclusion of the turnover proceeding, the
5 execution expires.

6 If you lose, you lose, and you get the money
7 if you win, and we're still well within that time
8 period. The execution was levied by the marshall on
9 February 20.

10 THE COURT: But what I'm trying to tell you is
11 nothing in the execution seems to indicate that the PMA
12 is a target.

13 MR. TOLCHIN: Our turnover proceeding is going
14 to say, in telegraphic form, we're going to ask Judge
15 Marrero to give us the money that the Bank of New York
16 has that in the name of PMA, because we contend that
17 the PMA is a department of the PA. That's what we
18 argued to your Honor.

19 Your Honor found otherwise, and we will see if
20 Judge Marrero goes along with -- I mean if he goes
21 along with the result you reached, whether for the same
22 reasons or for different reasons or not, but Judge
23 Marrero will decide that.

24 So it remains -- you know, if the Bank of New
25 York releases the money because of anything your Honor
26 orders in Ungar, the Bank -- I'm saying this crystal

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2 clear on the record -- the Bank of New York does so at
3 its peril.

4 THE COURT: Let me just say this. It's my
5 advice to the Palestine Monetary Authority -- and I'm
6 sorry if I keep calling it the Palestinian Monetary
7 Authority, which I think I did in my decisions as well,
8 but it's my advice that if you really seek to have the
9 money released, just get clarification from the Federal
10 Court on its order on its execution because that is
11 apparently the only thing that is stopping the Bank of
12 New York from releasing your funds.

13 Whether or not it, indeed, they should be
14 stopping that release, I'm not going to even opine
15 because I don't know what the Federal judge is going to
16 do here.

17 On its face it doesn't look like the execution
18 targets the PMA. It's very different from the order
19 that was in front of me, which had a notice naming the
20 PMA, both for the state restraining notice and the
21 Federal order, but I am not going to opine on this.

22 All I can say is that, as far as the case in
23 front of me goes, there is nothing restraining the
24 money, there is nothing in front of me restraining the
25 money.

26 I cannot opine on the Federal order, and I

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would suggest you go as quickly as you can to Federal Court on this issue.

MR. EMERY: The problem with that, your Honor, is, again, yes, you do have an order, and that order ordered BONY to release the funds, period.

There is no contrary Federal order. I mean Mr. Tolchin here even admits no proceeding has been started to at all ascribe PMA funds as part of this execution.

There is nothing for us to go to Judge Marrero with and say look what your Honor ordered. There is nothing to clarify. Mr. Tolchin is talking about, well, if you call yourself one thing and call yourself another thing, those two entities can both have their funds frozen, but if you even look at Judge Marrero's order, he lists the a/k/a's of the Palestinian Authority.

THE COURT: What you're asking me to do is rule on the Federal order. I cannot do so. I can tell you that I don't believe there is anything holding these funds, but I am not capable of telling you what the Federal Court intent was.

I suggest that you go to Federal Court to find out, and you may well have some kind of case against the Knoxes or their attorneys or somebody else for

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2 interfering or for -- I don't know. I have no idea,
3 but this is in Federal Court now. It's not in front of
4 me. In front of me there is nothing holding this
5 money.

6 MR. EMERY: In front of you the money should
7 be released.

8 THE COURT: Absolutely, but I don't know what
9 else there is here, and I am not going to interpret it.

10 MR. EMERY: Right.

11 THE COURT: It's not in front of me.

12 MR. EMERY: Right, but just so your Honor
13 understands why we didn't go to Federal Court -- I
14 think you do understand that -- if we were to bring an
15 action against Bank of New York to release the funds,
16 that action wouldn't customarily take place before the
17 Federal Court.

18 THE COURT: I don't understand why you would
19 bring a new action. I would think --

20 MR. EMERY: Your honor, we are not parties to
21 that action.

22 THE COURT: You could still -- there has been
23 -- look. I'm not going to tell you what to do here,
24 but I certainly think that you should be very careful
25 about submitting to any jurisdiction if you don't have
26 to submit to it, but I do think that if you can bring

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2 it under the other action, you should bring it under
3 the other action.

4 If, as you have on this record, that Mr.
5 Tolchin is claiming that that order is restraining PMA
6 funds, when, in fact, PMA has never been named --

7 MR. EMERY: Well, see, the real problem here
8 is that your Honor did issue an order, and the judge in
9 the Southern District also issued an order. Everything
10 is fine. The funds should be released.

11 MR. TOLCHIN: It's just an execution. It's
12 not an order. It's issued by the clerk, not by the
13 judge. It's not the product of a deliberative motion
14 practice. It's a procedural step.

15 MR. EMERY: I think, your Honor understands
16 the points I'm making, so we have that order. We have
17 another order. The only thing contradicting --

18 THE COURT: Counsel, at this point --

19 MR. EMERY: I want to say one thing. The only
20 thing contradicting the release of the funds is that
21 Mr. Tolchin and the Knoxes apparently have a belief
22 that they should still be restrained.

23 The Southern District has done nothing to do
24 it. What we are allowing to happen is a plaintiff's
25 attorney to decide what the Bank of New York does,
26 rather than your Honor to decide it.

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2 THE COURT: Well, no. Frankly, what they're
3 claiming is an execution order in Federal Court somehow
4 is holding the PMA money without any due process, I
5 believe, but is holding the PMA money.

6 MR. EMERY: They never came to the Federal
7 Court.

8 THE COURT: My suggestion is go to Federal
9 Court, pursuant to that execution to vacate that
10 execution against PMA, if you have papers from the
11 parties, the Knox parties, saying that that is holding
12 PMA funds.

13 MR. EMERY: The problem is the Knoxes
14 apparently haven't made that argument to the Federal
15 Court, and there is nothing to appeal.

16 THE COURT: They're making the argument here,
17 and they've sent you E-mails and sent the bank E-mails
18 stating so.

19 MR. EMERY: Okay.

20 Your Honor, I do ask that -- and I know you
21 can't direct Mr. Tolchin to be forthcoming in the
22 Federal Court proceeding but that he at least, when he
23 files his papers, let the court know that these
24 proceedings have been going on for some time and that
25 your Honor does have an order -- that your Honor has
26 issued an order on the alter ego type of point in this

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action, so that at least that court has that before it.

THE COURT: I would assume that you would do that.

MR. EMERY: I will see who goes first I guess.

THE COURT: Okay, this is over. I'm denying this. Go to Federal Court. I don't have this case.

MR. STRACHMAN: Thank you, your Honor.

(End of proceedings.)

It is hereby certified that the foregoing is a true and accurate transcript of the proceedings.



BARBARA STROH, CSR, RMR, CRR
Official Court Reporter
Supreme Court-New York County

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